

§ 54B-35. Merger of like savings and loan associations.

Any two or more mutual associations or any two or more stock associations organized and operating, may merge or consolidate into a single association which may be either one of said merging associations, and the procedure to effect such merger shall be as follows:

- (1) The directors, or a majority of them, of such associations as desire to merge, may, at separate meetings, enter into a written agreement of merger signed by them and under the corporate seals of the respective associations, specifying each association to be merged and the association which is to receive into itself the merging association or associations, and prescribing the terms and conditions of the merger and the mode of carrying it into effect. Such merger agreement must provide the manner and basis of converting or exchanging the withdrawable accounts in the mutual association or associations so merged for withdrawable accounts of the same or a different class of the receiving association, or of converting or exchanging the stock in the stock association or associations so merged into stock or other securities or obligations of the receiving association. The merger agreement may provide for such other provisions with respect to the merger as appear necessary or desirable, or as the Commissioner of Banks may require by regulation to enable him to discharge his duties with respect to such merger.
- (2) Such merger agreement together with copies of the minutes of the meetings of the respective boards of directors verified by the secretaries of the respective associations shall be submitted to the Commissioner of Banks, who shall cause a careful investigation and examination to be made of the affairs of the associations proposing to merge, including a determination of their respective assets and liabilities. The reasonable cost and expenses of such examination shall be defrayed by each association so investigated and examined. If, as a result of such investigation, he shall conclude that the members or stockholders of each of the associations proposing to merge will be benefited thereby, he shall, in writing, approve same. If he deems that the proposed merger will not be in the interest of all members or stockholders of the associations so merging, he shall, in writing, disapprove the same. If he approves the merger agreement, then same shall be submitted, within 45 days after notice of such associations of such approval, to the members or stockholders of each of such association, as provided in the next subdivision. Such disapproval may be appealed by the association to the Commission.
- (3) A special meeting of the members or stockholders of each of the associations shall be held separately upon written notice of not less than 20 days to members or stockholders of each association. The notice shall specify the time, place, and purpose for the calling of the meeting. Notice may be given to members of mutual associations by one or more of the following methods: (i) personal service, (ii) postage prepaid mail to the last address of each member appearing upon the records of the association, or (iii) publication of notice at least once a week for four successive weeks in one or more newspapers published in the county or counties where each association has its principal or a branch office, or in a newspaper published in an adjoining county if none is published in the county. Notice may be given to stockholders by personal service or prepaid mail to the last address of each stockholder appearing upon the records of the association. The

Commissioner of Banks may approve notice to stockholders by publication in the same manner as provided to members of mutual associations. The secretary or other officer of the association shall make proof by affidavit at such meeting of the due service of the notice or call for said meeting.

- (4) At separate meetings of the members or stockholders of the respective associations, the members or stockholders may adopt, by an affirmative vote of a majority of the votes or shares present, in person or by proxy, a resolution to merge into a single association upon the terms of the merger agreement as shall have been agreed upon by the directors of the respective associations and as approved by the Commissioner of Banks. Upon the adoption of the resolution, a copy of the minutes of the proceedings of the meetings of the members or stockholders of the respective associations, certified by the president or vice-president and secretary or assistant secretary of the merging associations, shall be filed in the office of the Commissioner of Banks. Within 15 days after the receipt of a certified copy of the minutes of such meetings the Commissioner of Banks shall either approve or disapprove the proceedings for compliance with this section. If the proceedings are approved by him, he shall issue a certificate of his approval of the merger and send it to each of the associations. The certificate shall be filed and recorded in the office of the Secretary of State. When the certificate is so filed, the merger agreement shall take effect according to its terms and shall be binding upon all the members or stockholders of the associations merging, and it shall be deemed to be the act of merger of such constituent savings and loan associations under the laws of this State, and the certificate or certified copy thereof shall be evidence of the agreement and act of merger of the savings and loan associations and the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such merger. Within 60 days after its receipt from the Secretary of State, the certified copy of the certificate shall be filed with the register of deeds of the county or counties in which the respective associations so merged have recorded their original certificates of incorporation. Failure to so file shall only subject the association to a penalty of one hundred dollars (\$100.00) to be collected by the Secretary of State. The only fees that shall be collected in connection with the merger of the associations shall be filing and recording fees. If the Commissioner of Banks disapproves the proceedings, he shall mark the certified copies of the meetings in his office as disapproved and notify the associations to that effect. Such disapproval may be appealed by the association to the Commission.
- (5) Upon the merger of any association, as above provided, into another:
 - a. Its corporate existence shall be merged into that of the receiving association; and all and singular its rights, powers, privileges and franchises, and all of its property, including all right, title, interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it under an unmerged existence, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be

vested in and become the property of such receiving association which shall have, hold and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held or enjoyed by the association or associations so merged; and such receiving association shall absorb fully and completely the association or associations so merged.

- b. Its rights, liabilities, obligations and relations to any person shall remain unchanged and the association into which it has been merged shall, by the merger, succeed to all the relations, obligations and liabilities as though it had itself assumed or incurred the same. No obligation or liability of a member, customer or stockholder in an association which is a party to the merger shall be affected by the merger, but obligations and liabilities shall continue as they existed before the merger, unless otherwise provided in the merger agreement.
 - c. A pending action or other judicial proceeding to which any association that shall be so merged is a party, shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree in the same manner as if the merger had not been made; or the receiving association may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such other association if the merger had not occurred.
- (6) Notwithstanding any other provision of this section, the Commissioner of Banks may waive any or all of the foregoing requirements upon finding that such waiver would be in the best interest of the members or stockholders of the merging associations. (1981, c. 282, s. 3; c. 670, s. 1; 1981 (Reg. Sess., 1982), c. 1238, s. 8; 1983, c. 144, s. 13; 1985, c. 659, s. 5; 1989, c. 76, s. 8; 2001-193, s. 16.)